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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Review Application No.11 of 1993
Review Application No.12 of 1993
Original Application No.201 of 1994
And
Original Application No.202 of 1994

Date of decision: This the 22nd day of July 1998

The Hon'ble Mr Justice D.N. Baruah, Vice-Chairman
The Hon'ble Mr G.L. Sanglyine, Administrative Member

1. R.A.No.11/93

Shri J. Dutta Roy

2. R.A.No.12/93

Shri P.R. Paul

3. O.A.No.201/94

Shri D.S. Roy

4. O.A.No.202/94

1. Shri R. Dhar

2. Shri P.R. Barua

.....Applicants

By Advocates Mr J.L. Sarkar and
Mr M. Chanda.

- versus -

Union of India and others

.....Respondents

By Advocates Mr S. Ali, Sr. C.G.S.C. and
Mr B.K. Sharma.

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O R D E R

BARUAH.J. (V.C.)

Both the above review applications and the two original applications relate to the seniority of the Clerks working in the office of the Deputy Assistant Director General (M.S.), Government of India, Ministry of Health and Family Welfare, Government Medical Store

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Depot, Guwahati. Therefore, we propose to dispose of all the applications by this common order.

2. The review applicants, namely, Shri J. Dutta Roy and Shri Priti Ranjan Paul, and the applicants in the original applications, namely, Shri D.S. Roy, Shri R. Dhar and Shri Pramod Ranjan Barua were Lower Division Clerks (LDC for short) in the Government Medical Store Depot. They joined as LDCs during the period from 1970 to 1971. A seniority list of the LDCs was prepared in the year 1971. However, the said seniority list was revised (by way of modification) and published on 13.12.1978. The review applicants and the applicants in the original applications being aggrieved by the said revision protested against the said revised seniority list. In the meantime one Shri Abani Kanta Das, LDC, who was adversely affected by the revision of the seniority list of 1971, challenged the said revised seniority list dated 13.12.1978. Ultimately, the matter came up before this Tribunal by way of G.C.No.23 of 1986. This Tribunal disposed of the said case giving direction to the respondents that the said Shri Abani Kanta Das (applicant in that case) be restored to his earlier position in the grade of UDC as on the date on which he was asked to report. While disposing of the said case the Tribunal in its order dated 5.6.1986 observed thus:

".....What ever that might be, the seniority is a very valuable right for the Government Employees. It is now an established principle that this right cannot be interfered with except after allowing adequate opportunity to the persons likely to be adversely affected by any proposed revision. In this case admittedly no such opportunity was given to the applicant before altering his seniority in detriment to his interests....."

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By the said order this Tribunal found that the revised seniority list was not properly done. Accordingly the Tribunal set aside the revised seniority list and directed the respondents to restore the position of Shri Abani Kanta Das (applicant in that case) in the grade of UDC as on the date on which he was asked to report. Thereafter, one Shri Rabin Kalita and Smt Subarnalata Devi, UDCs filed original application No.73/90 before this Tribunal challenging certain orders and seeking certain directions. They also prayed that they be declared as senior in service to the respondent Nos.4 & 5, namely, Shri J.D. Roy and Shri P.R. Paul (the present review applicants). The Tribunal by order dated 15.9.1993 disposed of the said original application holding thus:

"The modified LDC seniority list of 1978 (13.12.1978) is restored to the position as stood prior to 5.6.1986. The relief granted to Abani Kanta Das by the judgment dated 5.6.1986 fixing his seniority over Daya Shankar Choudhury is protected and the respondents are directed to correct the modified LDC seniority list of 1978 (13.12.1978) by arranging position of Abani Kanta Das and Daya Shankar Choudhury as serial Nos.7 and 8 respectively and to treat Abani Kanta Das senior to Daya Shankar in the cadre of UDC. Shri Rabin Kalita and Subarnalata Devi were serial Nos.1 and 2 in LDC modified seniority list of 1978 and their positions as such have been restored consequent to restoration of the modified LDC seniority list of 13.12.1978. Both Rabin and Subarnalata are senior to P.R. Paul and J. Dutta Roy in the grade of UDC and the respondents are directed to rearrange the seniority list of UDC as on 1.1.1988 by placing Robin Kalita and Smt Subarnalata Devi in the positions above Shri P.R. Paul and Shri J.Dutta Roy. Both the applicants Rabin Kalita and Subarnalata Devi are entitled to all consequential service benefits above P.R. Paul and J.Dutta Roy in the cadre of UDC. The respondents are directed to correct/modify all their orders issued earlier consequent to the judgment dated 5.6.1986 excluding the benefits/reliefs granted to Shri Abani Kanta Das."

Meanwhile, Review Application No.8/90 was filed by Shri Rabin Kalita and Smt Subarnalata Devi. The said Review Application was covered by the order passed in original application No.73/90 and accordingly disposed of.

3. Shri J. Dutta Roy, the applicant in the present review application No.11 of 1993 challenged the order on the ground.....

ground that though he was made a party in Review Application No.8/90 no notice was served on him. The applicant Shri P.R. Paul in Review Application No.12/93, however, submitted that he could not appear in the original application No.73/90 on the ground that he was under the belief that his case would be defended by the respondents. The applicants in the two original application Nos.201 and 202 of 1994, on the other hand, challenged the order on the ground that they were not made parties and the judgment passed by this Tribunal in O.A.No.73/90 was contrary to law and liable to set aside.

4. We heard Mr J.L. Sarkar, learned counsel for both the review applicants and the original applicants, Mr S. Ali, learned Sr. C.G.S.C. and Mr B.K. Sharma appearing on behalf of the respondents. Mr Sarkar submitted that the order was set aside in the Review Application No.8/90 without serving any notice so far the review applicant in R.A.No.11/93 was concerned. Though notice was served on the review applicant in R.A.No.12/93 he did not contest as he was under the impression that his case would be defended by the respondents. Mr B.K. Sharma, on the other hand, submitted that the modified seniority list of 13.12.1978 was never challenged by the present applicants. Therefore, according to him, there was no cause of action for the present applicants in all the applications. Mr Sharma further submitted that notices were duly served on both the review applicants which will be evident from the records.

5. On the rival contentions of the parties it is now to be seen whether the present applications are maintainable. We have perused the order. It appears that the revised seniority list dated 13.12.1978 was never challenged by the present applicants. Besides, from the records it appears that notices were duly served on both

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the review applicants. Therefore, the contention of the review applicant in Review Application No.11/93 that at the relevant time he was on deputation is contrary to the record. Besides, it was the duty of the applicants to challenge the revised seniority list dated 13.12.1978 at the appropriate time. Therefore, in our opinion the present applicants cannot challenge the said seniority list dated 13.12.1978 as at this stage the said list has reached its finality.

6. In view of the above we find no merit in the applications. Accordingly all the above applications are dismissed. No order as to costs.

Sd/- VICE-CHAIRMAN

Sd/- MEMBER (ADMN)